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EXAMINER

MATTER, KRISTEN CLARETTE

ART UNIT

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

This Action is in response to the amendment filed on 3/30/2009. Claim 1 has been amended, claims 10, 16, 17 and 19 have been cancelled, and no claims have been added. Currently, claims 1, 9, 13-15, 18, and 20-24 are pending in the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 9, 13-15, 18, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milstein et al. (US 5,358,467) and in view of Sampson (US 904,650).

Regarding claims 1, 15, 18, and 20-21, Milstein et al. discloses a skin massage device comprising a handset (9) connected to a machine body (21), said handset comprising a chamber (1) closed by a deformable membrane (15) which at least partially adheres to a patient's skin by virtue of a vacuum generated in said chamber by a vacuum generating device (3), wherein the device comprises means (28) for producing a variable vacuum in said chamber to deform said membrane thereby lifting, folding, compressing, and smoothing the patient's skin (see column 5, lines 25-35), wherein said membrane has a central portion (middle of membrane) having a plurality of aligned, spaced holes (18) for lifting a portion of the skin and two lateral portions (outsides of membrane) that are moveable by the vacuum and each of the lateral portion has through holes (18) and two projections (see Figure 1). Furthermore, because the term "portion"

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provides no definite structural limitation, depending on how the portions are defined (i.e., central portion runs all the way across the middle of the circular membrane from a bottom view of the device, varying the width of the central portion, etc.) the central portion can be considered to have one central hole and two lateral holes and/or the portions can be considered to extend transversely across the surface of the membrane in a transversely spaced or aligned relationship between lateral portions. As seen in figure 1, the holes are spaced from one another and aligned between the arbitrary lateral portions.

The difference between the instant claims and Milstein et al. is the lateral portions being thicker than said central portion. However, absent a critical teaching and/or a showing of unexpected results from the lateral portions being thicker than the central portion, examiner contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provide thicker lateral portions for allowing more targeted pressure to be applied to the skin. In addition, Sampson discloses a skin massaging device with a rubber membrane in which lateral portions are thicker than a central portion (see Figure 3) in order to provide both a firm pressure and a yieldable pressure upon the skin (column 2, lines 50-60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Milstein et al.'s device with thicker lateral portions as taught by Sampson in order to provide varying degrees of pressure on the skin.

Regarding claim 9, Milstein et al. discloses that the membrane is removable from the device (column 2, lines 50-60) and therefore it is inherently disposable because it is capable of being thrown away by a user if broken or worn out.

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Regarding claims 13 and 14, Milstein et al. discloses means for activating and presetting (i.e., programming) the pulsating cycle times as determined by an operator (column 5, lines 30-50).

Regarding claim 22, Milstein et al. discloses that the projections can be "sharp or dull" (column 2, lines 55-60). To the extent that "dull" cannot be considered substantially dome-shaped, examiner contends that the shape of the projections is an obvious design consideration to one of ordinary skill in the art depending on the desired pressure and personal preferences of a user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Milstein et al.'s device with substantially dome-shaped projections in order to provide increased comfort or a desired pressure pattern to a user.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milstein et al. as applied to claims 1, 9, 13-15, 18, and 20-22 above, and further in view of Fang (US 5,377,701). Milstein et al. is silent as to the membrane having a convex central portion and concave lateral portions. However, this shape is well known and commonly used in the art as disclosed by Fang in Figure 4. Therefore, absent a critical teaching and/or a showing of unexpected results from the shape, examiner contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have curved the membrane such that the central portion was convex and the lateral portions were concave in order to apply a specific pressure pattern and to focus the suction of the vacuum on the skin under the central area.

Response to Arguments

Applicant's arguments filed 3/30/2009 have been fully considered but they are not persuasive.

In response to applicant's argument that Milstein does not teach a central portion extending transversely and having a plurality of holes aligned and spaced between two lateral portions, examiner respectfully disagrees and points out that as discussed in the rejection the term "portion" can be arbitrarily defined because the claimed "portions" have no definite structural limitation for boundaries. Portions are merely a limited part of a whole. As seen in figure 1 of Milstein, the two most central holes (and transverse surrounding areas) can be considered the transversely extending "central portion" with spaced aligned holes between two lateral portions (i.e., the lateral portions being the remaining outer holes and area that are not part of the arbitrary central portion).

In response to applicant's argument that Sampson does not teach suction holes, examiner respectfully points out that Sampson was cited merely as teaching a massaging membrane with a thicker lateral portion. Motivation for combining the references is discussed above for providing varying degrees of pressure on the skin. The membrane of Sampson would perform equally well with out without the added suction of the Milstein device because the thicker lateral portions would still produce the varying degrees of pressure. Furthermore, because both devices are in the field of massaging by deformable membranes, the two are not considered to lie in different fields and one of ordinary skill would in fact be motivated to look at the combination with a reasonable expectation of success.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. MATTER whose telephone number is (571)272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kristen C. Matter/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771